

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

ORDER OF BUSINESS

- I. Call to Order
- II. Salute to the Flag
- III. Roll Call
- IV. Adoption of Agenda
- V. Proclamations
- VI. Communications and Presentations
- VII. Public Participation
- VIII. Controller's Report
- IX. Old Business:
- X. New Business:
 - (a) Resolutions
 - (b) Ordinances:
 - (c) Local Laws:
 - (d) Introduction of Ordinances:
 - (e) Introduction of Local Laws:
 - (f) Committee Reports
 - (g) Scheduling of Committee Meetings
 - (h) Other
- XI. Executive Session
- XII: Adjournment

5:30PM COW

- 1. Review of Agenda Items
- 2. Any other business to come before the Council

5:50PM CDGB GRANT Public Hearing

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

OLD BUSINESS

NEW BUSINESS

182. RESOLUTION APPROVING MINUTES	MARTUSCELLO
183. RESOLUTION TRANSFERRING FUNDS- EMPLOYEE RELATIONS CONTRACTUAL	S. GOMULA
184. RESOLUTION AUTHORIZING OPTION AGREEMENT -MOHAWK VALLEY DEVELOPMENT	MAYOR
185. RESOLUTION AUTHORIZING AGREEMENT- RDS SERVICES, LLC	MAYOR
186. RESOLUTION AUTHORIZING BIDS- WWTP CONTRACT 7 & 8	S. GOMULA
187. RESOLUTION AUTHORIZING AGREEMENT – CONTROLLER/TRIAD	MARTUSCELLO
188. RESOLUTION APPROVING AUDIT	COLLINS

Introduction to Local Law “A” of 2022 (to be known as Local Law 1 of 2022 if adopted.) Local Law Modifying City Charter with regard to City Controller -Mandatory Referendum

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-182

RESOLUTION ADOPTING MINUTES OF THE LAST COMMON COUNCIL MEETING

BY: ALDERMAN MARTUSCELLO

RESOLVED, the minutes of the last Common Council Regular Meeting of April 5, 2022 as well as the Special Council Meeting held on April 8, 2022 are hereby adopted.

City of Amsterdam, NY

	Aye	Nay
Alderman Quist-Demars		
Alderman D. Gomula		
Alderman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-183

RESOLUTION TRANSFERRING FUNDS- EMPLOYEE RELATIONS

BY: ALDERMAN S. GOMULA

WHEREAS, a transfer of funds is necessary in order to cover the cost to create an email for a P/T employee and any additional funding that may be required in contractual expense until end of FY 21/22; now therefore be it

RESOLVED, the Controller is authorized to transfer funds from the 2021/2022 budget as follows:

DECREASE EXPENSE:

A.1435.4002	Advertising	\$280.00
A.1435.4056	Travel	\$280.00

INCREASE EXPENSE:

A.1435.4000	Contractual	\$560.00
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City of Amsterdam, NY

	Aye	Nay
Alderwoman Quist-Demars		
Alderman D. Gomula		
Alderwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-184

**RESOLUTION AUTHORIZING MAYOR TO EXECUTE OPTION AGREEMENT
WITH MOHAWK VALLEY DEVELOPMENTS LLC for 399 W. MAIN ST., 36
CARMICHAEL ST., 52 CARMICHAEL ST. AND 380 W. MAIN ST.**

BY: MAYOR CINQUANTI

WHEREAS, The City is the owner of that certain parcels of real property known as 399 West Main St, 36 Carmichael St Amsterdam, 52 Carmichael St and 380 West Main St Amsterdam, and

WHEREAS, the City wishes to grant to Mohawk Valley Developments, LLC, for the consideration of \$1.00, an irrevocable and exclusive option for a period of twelve months to purchase said parcels, subject to the terms and conditions set for the in the annexed Option Agreement and Memorandum of Option Agreement; it is hereby

RESOLVED, that Mayor Michael Cinquanti is hereby authorized to enter into the attached Option Agreement with Mohawk Valley Developments, LLC for the above-referenced parcels.

City of Amsterdam, NY

	<u>Aye</u>	<u>Nay</u>
<u>Alderwoman Quist-Demars</u>		
<u>Alderman D. Gomula</u>		
<u>Alderwoman Collins</u>		
<u>Alderman S. Gomula</u>		
<u>Alderman Martuscello</u>		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-185

**RESOLUTION AUTHORIZING MAYOR TO ENGAGE RDS SERVICES, LLC FOR
RETIREEE DRUG SUBSIDY RE-OPENING SERVICES**

BY: MAYOR CINQUANTI

WHEREAS, The City of Amsterdam maintains a group health program under which eligible individuals are able to maintain certain health care benefits; and

WHEREAS, The City is desirous to engage RDS Services LLC with respect to the re-opening of previously closed Retiree Drug Subsidy Plan years, with RDS Services, LLC receiving a fee of 25% of each subsidy payment received by the City from the Centers for Medicare and Medicaid Services (CMS) as a result of the services provided by RDS Services, LLC; and

WHEREAS, a copy of the agreement being attached hereto and being incorporated herein by reference; therefore be it

RESOLVED, that Mayor Cinquanti is authorized to execute the attached contract with RDS Services, LLC

City of Amsterdam, NY

	Aye	Nay
Aldерwoman Quist-Demars		
Alderman D. Gomula		
Aldерwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-186

**RESOLUTION TO AUTHORIZE THE CITY CLERK TO ADVERTISE FOR BONDS FOR THE
WASTEWATER SYSTEM IMPROVEMENTS, CONTRACT NO. 7 – GENERAL
CONSTRUCTION; CONTRACT NO. 8 – ELECTRICAL WORK**

WHEREAS, the City of Amsterdam is Contracted with the New York State Environmental Facilities Corporation (NYSEFC) for Project No. C4-5442-09-00 of the Clean Water State Revolving Fund (CWSRF) for various improvements to the Wastewater Treatment Plant (WWTP); and,

WHEREAS, NYSEFC has reviewed and approved plans and specifications prepared by Prime AE Group of NY related to upgrades to the WWTP Pipe Gallery as Contracts 7 & 8 of CWSRF Project No. C4-5442-09-00; and,

WHEREAS, CWSRF Project No. C4-5442-09-00 will provide the funding necessary to accomplish Contracts 7 & 8;

NOW THEREFORE, BE IT

RESOLVED that the City Clerk is hereby authorized to advertise publicly for bids for Wastewater System Improvements Contract No. 7 – General Construction, and Contract No. 8 – Electrical Work

City of Amsterdam, NY

	Aye	Nay
Alderwoman Quist-Demars		
Alderman D. Gomula		
Alderwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-187

RESOLUTION AUTHORIZING AGREEMENT -CONTROLLER/TRIAD GROUP

BY: ALDERMAN MARTUSCELLO

WHEREAS, the City of Amsterdam is desirous to renew an agreement with TRIAD to provide services in connections with Worker's Compensation Benefits related to our Public Safety Employees as well as all other City Employees

RESOLVED, the Mayor is authorized to renew the attached agreement with TRIAD GROUP, LLC for the term date of January 1, 2020 through December 31, 2022.

City of Amsterdam, NY

	Aye	Nay
Alderwoman Quist-Demars		
Alderman D. Gomula		
Alderwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

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6:00PM

RESOLUTION #21/22-188

RESOLUTION APPROVING AUDIT

BY: ALDERWOMAN COLLINS

RESOLVED, the bills and documentation of same presented in “Pre-Check Writing Report Parameter” dated April 19, 2022 to the Common Council and affirmed by the Controller as correct and to be paid, the City Clerk is authorized and empowered to issue warrants in payment of same.

City of Amsterdam, NY

	<u>Aye</u>	<u>Nay</u>
<u>Aldерwoman Quist-Demars</u>		
<u>Alderman D. Gomula</u>		
<u>Aldерwoman Collins</u>		
<u>Alderman S. Gomula</u>		
<u>Alderman Martuscello</u>		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

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INTRODUCTION OF LOCAL LAW “A” OF 2022 (TO BE KNOWN AS LOCAL LAW 1 OF 2022 IF ADOPTED.)

LOCAL LAW MODIFYING CITY CHARTER WITH REGARD TO CITY CONTROLLER - MANDATORY REFERENDUM

BY: MAYOR CINQUANTI

Part 1: Legislative Intent –

The fiscal crisis that the City of Amsterdam has faced over the last several years has been well-documented, including but not limited to the deficit legislation that was enacted by the State of New York in 2019. It is necessary for the City to be introspective in terms of the organizational structure of our city government so as to put the City in the best position possible for long-term success. Presently, the eligibility requirements for the position of City Controller are most similar to that of a political position such as Mayor or Alderman in that it is an elective position that only has a residency requirement and an age requirement of 18 years and there are no minimum educational or work-experience qualifications required. Given that the position of City Controller requires a high level of technical accounting skill and financial management experience and knowledge, it is believed that minimum educational and professional qualifications should be required for the position. In addition, the City Charter does not expressly provide for the position of City Controller to be under the direction and supervision of the mayor and prevents a mayor from being able to mandate production from a City Controller of many things such as the preparation of specialized reports and projections relating to City finances and future budgeting activities.

The legislative intent of the instant local law is to modify the City Charter of the City of Amsterdam so as to abolish the position of City Controller as an elected position and re-establish the position of City Controller as an appointive position made by the Mayor of the City of Amsterdam, with the term of the Controller to run coterminous with the term of the Mayor of the Amsterdam; and further establishing minimum qualifications for the new appointive position of City Controller and reorganizing the position of City Controller to be under the direction and supervision of the Mayor.

The instant local law is subject to mandatory referendum pursuant to Municipal Home Rule Law, Section 23.

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Part 2: Enactment:

BE IT ENACTED AS FOLLOWS, that the City Charter of the City of Amsterdam is modified as follows:

Modification #1:

C-9 – Remove “Controller” as an elective City officer position.

Modification #2:

C-11B – omit this subsection as the same pertains to the elective office of Controller.

Modification #3:

C-12 – Modify subsections “A” and “B” to include “Controller” as an appointive officer.

Modification #4:

C-39 of the City Charter is amended to read as follows:

The Controller shall be appointed for a term of four (4) years. He or she shall be under the direction and supervision of the Mayor. He or she shall be the chief fiscal officer of the city and have charge of the administration of all its financial affairs. He or she shall have/be one of the following minimum qualifications (1) a Certified Public Accountant; (2) a four-year degree from an accredited college and has had at least three (3) years' experience in accounting; (3) a person who has had at least eight (8) years' experience in public accounting; or (4) a person who has had equivalent experience in financial management for at least eight (8) years.

Part 3: Effectiveness: A public hearing having been held on May 3, 2022, upon ratification of the instant local law by the Common Council, said local law shall be subject to a mandatory referendum pursuant Municipal Home Rule Law, Section 23 for the approval by the electors at the general election to be held on November 8, 2022. Upon approval by the electors, the instant local law shall become effective January 1, 2023 with the first appointment for the modified position of Controller being effective January 1, 2024.

OPTION AGREEMENT

between

City of Amsterdam, New York, Optionor

and

Mohawk Valley Developments LLC, Optionee

dated as of

March 12, 2022, 2022

OPTION AGREEMENT

This OPTION AGREEMENT (this “**Agreement**”) dated as of the 12th day of March, 2022 (the “**Effective Date**”) is entered into between City Of Amsterdam (“**Optionor**”), having an address at 61 Church St Amsterdam, NY 12010 and Mohawk Valley Developments LLC (“**Optionee**”), having an address at 359 Broadway Ste: B Troy, NY 12180

WHEREAS, Optionor is the owner of that certain real properties known as 399 West Main St Amsterdam, NY 12010 which is shown as 39.14-2-46 on the tax maps of City of Amsterdam, New York 12010, 36 Carmichael St Amsterdam, NY 12010 which is shown as 39.14-2-48 on the tax maps of City of Amsterdam, New York 12010, 52 Carmichael St Amsterdam, NY 12010 which is shown as 39.14-2-44 on the tax identification maps of the City of Amsterdam, New York 12010 and 380 West Main St Amsterdam, NY 12010 which is shown as 39.14-2-45 on the tax maps of City of Amsterdam, New York 12010, more particularly described in Exhibit A attached hereto (collectively, the “**Property**”); and

WHEREAS, Optionor wishes to grant to Optionee, and Optionee wishes to obtain from Optionor, an irrevocable and exclusive option to purchase the Property, subject to the terms and conditions set forth below. NOW, THEREFORE, in consideration of the Option Payment (defined below), and the other mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Option.** Subject to Optionee’s timely payment of the Option Payment, Optionor hereby grants to Optionee an exclusive and irrevocable option to purchase the Property.

2. **Option Term.** The term of the Option (the “**Option Term**”) shall commence on the Effective Date and automatically expire on the date that is twelve months thereafter (the “**Option Termination Date**”), unless duly extended, exercised, or sooner terminated as provided below in this Option Agreement.

3. **Option Payment.**

(a) The Option is granted in consideration of Optionee’s payment to Optionor, concurrently with the execution of this Agreement, of the amount of One Dollar (\$1) (the “**Option Payment**”). The Option Payment shall be payable as follows:

(b) Optionee acknowledges and agrees that the Option Payment constitutes consideration to Optionor for Optionor’s agreement to: (i) enter into this Agreement with Optionee; (ii) not sell the Property to another purchaser while this Agreement is in effect; and (iii) sell the Property to Optionee on the terms and conditions and for the Purchase Price in the Purchase Agreement (defined below), provided that Optionee has exercised the Option in the manner provided in Section 4 below. The Option Payment shall be non-refundable to Optionee except as provided in Section 5 below.

4. **Exercise of Option.**

(a) At any time during the Option Term, Optionee may exercise the Option by sending Optionor a written notice of Optionee's intention to exercise the Option (the "**Exercise Notice**"). Optionor shall promptly execute the Purchase Agreement and return two (2) fully-executed originals to Optionee.

(b) If Optionee does not exercise the Option in the manner described herein on or before the Option Termination Date, the option will automatically terminate. Thereafter, neither party shall have any further obligations hereunder except for those that expressly survive termination of this Agreement.

5. **Release of Option Payment.** Upon closing of the purchase of the Property pursuant to the Option to Purchase Agreement,

(i) first, in payment of the closing costs payable by the purchaser thereunder; (ii) then, to Optionor, in the amount of real estate taxes and property insurance premiums paid by Optionor on account of the Property for the period between the Effective Date and the date of closing on said purchase; and (iii) any portion of the Option Payment that is not required to be paid pursuant to subsections (i) and (ii) of this subsection (a) shall be paid to Optionee.

6. **Damage or Destruction/Condemnation.** If, prior to exercise of the Option through no fault of Optionee, any portion of the Property shall be: (a) taken by any condemnation or eminent domain which permanently and materially impairs the use of the Property; or (b) damaged or destroyed by fire or other casualty then Optionee may cancel this Agreement by written notice to Optionor. However, Optionee shall have no right to cancel this Agreement if, before Optionee gives notice of cancellation to Optionor, the Property has been repaired or replaced so that it is in substantially the same condition as it was on the Effective Date.

7. **Access.**

(a) **Optionee's Access.** At any time prior to the exercise of the Option or the termination of this Agreement, as the case may be, and at all times, subject to Section 7(b), Optionee and its agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively, "**Optionee's Representatives**") shall have the right to enter upon and pass through the Property during normal business hours to examine and inspect the same, as well as conduct reasonable tests, studies, investigations, and surveys to assess utility availability, soil conditions, environmental conditions, physical condition, and the like of the Property and design and prepare engineering plans for the development of the Property.

(b) **Conditions to Access.** In accessing the Property pursuant to this Agreement, Optionee shall at all times comply with all laws and regulations of all applicable governmental authorities and at all times that Optionee shall access the Property, Optionee shall maintain a general liability policy with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence, such coverage to include personal injury, bodily injury, and contractual liability, which policies shall name Optionor, as its interests may appear, on such policies as an additional insured.

(c) **Optionee Indemnification.** To the fullest extent permitted by law, Optionor agrees to indemnify and hold Optionee harmless from and against any and all losses, costs, damages,

liens, claims, liabilities, or expenses (excluding consequential and indirect damages) incurred by Optionee arising from or by reason of Optionee's and/or Optionee's Representatives' access to the Property, except to the extent such losses, costs, damages, liens, claims, liabilities, or expenses are caused by or resulting from: (a)intentionally deleted; (b) Optionee's gross negligence or willful misconduct; and/or (c) shall survive for a period of one (1) year following the exercise of the Option or termination of this Agreement.

8. **Obligation.** Optionor will remove any and all hazardous materials found in the Phase II ESA and deliver the properties to Optionee with Notice(s) of Transfer of Certificate of Completion for **Hazardous Waste Disposal Pursuant to 6 NYCRR Part 375**, this will include any future purchases from the Optionor that are bound to this agreement. Moreover, the Optionor understands and agrees that this agreement hinges on, and is specifically contingent upon, its ability to deliver said property located at 399 West Main St Amsterdam, NY 12010, which is shown as 39.14-2-45 on the tax maps of Amsterdam, NY, to the satisfaction of Optionee, free of all hazardous material. This property must be delivered to the Optionee by Closing.

9. **Default by Optionor.** If Optionor fails to perform any of its obligations, or is otherwise in default hereunder, Optionee shall have the right (a) to terminate this Option Agreement by notice to Optionor, and/or (b) to seek such other relief Optionee may have at law or in equity, including, without limitation, seeking injunctive relief to prevent a sale of the Property to a party other than Optionee and the filing of an action for specific performance. All notices hereunder shall be sent to the parties as follows:

If to Optionor:

Name: City of Amsterdam
Address: 61 Church St Amsterdam, NY 12010
Attention: Mayor Michael Cinquanti
Email:

If to Optionee:

Name: Mohawk Valley Developments LLC
Address: 359 Broadway Ste: B Troy, NY 12180
Attention: Luis Gonzalez
Email: lagonzalezconstruction@yahoo.com

With a copy to:

Name: Donald LaRosa Esq
Address: 81 Worth St. NY, NY 10013
Attention: Donald LaRosa
Email: dlarosalaw@gmail.com

(a) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

(b) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

10. **Assignment of Option.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Optionee may not assign its interest under this Agreement without the prior consent of Optionor, not to be unreasonably withheld, conditioned, or delayed.

11. **Memorandum of Option Agreement.** Concurrently with the execution and delivery of this Agreement, Optionor and Optionee shall execute and acknowledge a Memorandum of Option Agreement in the form attached as Exhibit B, which Optionee, at its sole cost and expense, is authorized to record in the Office of the County Clerk of Montgomery County

12. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

Signatures on following page.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement as of the Effective Date.

OPTIONOR:

City of Amsterdam, New York

By: _____

Name: Mayor Michael Cincanti

Title: Authorized Signatory

OPTIONEE:

Mohawk Valley Developments LLC

By: _____

Name: Luis Gonzalez

Title: Managing Member

Attorney:

Donald LaRosa, Esq.

By: _____

Name: Donald LaRosa, Esq.

EXHIBITS

Exhibit A

Tax Map Locations

Exhibit B

Form of Memorandum of Option Agreement

Exhibit C

Memorandum of Work Performed

EXHIBIT A

TAX MAP LOCATIONS

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Amsterdam, County of Montgomery and State of New York:

Properties

Location:

- 1.) West Main St, **SWIS:** 270100, **SBL:** 39.14-2-46, **East** 569298, **North** 1499664
- 2.) Carmichael St, **SWIS:** 270100, **SBL:** 39.14-2-48, **East** 599336, **North** 1499733
- 3.) Carmichael St, **SWIS:** 270100, **SBL:** 39.14-2-44, **East** 569336, **North** 1499884
- 4.) West Main St, **SWIS:** 270100, **SBL:** 39.14-2-45, **East** 569188, **North** 1499772

EXHIBIT B

Form of Memorandum of Option Agreement

MEMORANDUM OF PURCHASE OPTION AGREEMENT

between

City of Amsterdam, New York, Optionor

and

Mohawk Valley Developments LLC, Optionee

dated as of

February 25, 2022

MEMORANDUM OF PURCHASE OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT ("**Memorandum**") dated as of the day of February, 2022 (the "Effective Date"), by and between **City of Amsterdam**, ("**Optionor**") and **Mohawk Valley Developments LLC**, a New York Limited Liability Corporation ("**Optionee**").

Optionor and Optionee hereby acknowledge the following:

1. For valuable consideration described in that certain Option Agreement, of even date herewith (the "**Option Agreement**"), Optionor has granted to Optionee the exclusive and irrevocable option to purchase that certain property located at 399 West Main St Amsterdam, NY 12010 which is shown as 39.14-2-46 on the tax maps of City of Amsterdam, New York 12010, 36 Carmichael St Amsterdam, NY 12010 which is shown as 39.14-2-48 on the tax maps of City of Amsterdam, New York 12010, 52 Carmichael St Amsterdam, NY 12010 which is shown as 39.14-2-44 on the tax identification maps of the City of Amsterdam, New York 12010, and more particularly described in Exhibit A attached hereto (the "**Property**"); and
2. **Term.** The initial term of the Option commences on the Effective Date hereof and expires on the date that is twelve months thereafter (the "**Term**").
3. **Notices.** Notices shall be given to the parties to the Option Agreement in writing by hand delivery, registered mail, or overnight delivery, to the following addresses: if addressed to Optionor, City of Amsterdam, New York, NY 12010, and, if addressed to Optionee, at 359 Broadway Ste: B, Troy, NY 12180.
4. **Conflicts.** This Memorandum is intended only for recording purposes to provide notice of certain terms and conditions contained in the Option Agreement and is not to be construed as a complete summary of the terms and conditions thereof. This Memorandum is subject to the Option Agreement and any amendments, modifications, alterations, renewals, and extensions of the Option Agreement. The terms and provisions of the Option Agreement are incorporated in this Memorandum by reference. If there is any conflict between this Memorandum and the Option Agreement, the provisions of the Option Agreement shall control.
5. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Option Agreement as of the date first above written.

OPTIONOR:

City of Amsterdam, New York

By: _____

Name: Mayor Michael Cinquanti

Title: Authorized Signatory

Optionor Acknowledgment:

STATE OF NEW YORK)

) ss:

COUNTY OF _____)

On the _____ day of _____ before me, the undersigned, personally came _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] capacity, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Name

Title

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Option Agreement as of the date first above written.

OPTIONEE:

Mohawk Valley Developments
a New York Limited Liability Company

By: _____

Name: Luis Gonzalez

Title: Managing Partner

Optionee Acknowledgment:

STATE OF NEW YORK)

) ss:

COUNTY OF _____)

On the _____ day of _____ before me, the undersigned, personally came _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [he/she] executed the same in [his/her] capacity, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Name

Title

EXHIBIT C

Memorandum of Work Performed

Memorandum of Work Performed

To follow is the work performed by Mohawk Valley Developments LLC in preparation to develop the Site Locations listed below:

Locations:

- 1.) West Main St, **SWIS:** 270100, **SBL:** 39.14-2-46, **East** 569298, **North** 1499664
- 2.) Carmichael St, **SWIS:** 270100, **SBL:** 39.14-2-48, **East** 599336, **North** 1499733
- 3.) Carmichael St, **SWIS:** 270100, **SBL:** 39.14-2-44, **East** 569336, **North** 1499884
- 4.) West Main St, **SWIS:** 270100, **SBL:** 39.14-2-45, **East** 569188, **North** 1499772

Work Performed:

Project Design
 Market Study
 Target Market Analysis
 Cost / Absorption Analysis
 Impact Study (Beginning Phases)
 Project Phasing and Milestones
 Consulted with Brownfield Experts
 Met with Geothermal Contractors
 Met and consulted with Tax Credit Specialist
 Several meetings with potential investors
 Beginning Stages of Securing Funding with Financial Institutions
 Third Party Analysis of Absorption

Still needed

Applying / Securing Tax Credits
 Secure Financing
 Hiring of Construction Managing team
 Long term planning
 Contractor Selection / Prime

Extension Request

1 year

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

ORDER OF BUSINESS

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- 1. Review of Agenda Items
- 2. Any other business to come before the Council

5:50PM CDGB GRANT Public Hearing

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April 19, 2022

6:00PM

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NEW BUSINESS

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April 19, 2022

6:00PM

RESOLUTION #21/22-182

RESOLUTION ADOPTING MINUTES OF THE LAST COMMON COUNCIL MEETING

BY: ALDERMAN MARTUSCELLO

RESOLVED, the minutes of the last Common Council Regular Meeting of April 5, 2022 as well as the Special Council Meeting held on April 8, 2022 are hereby adopted.

City of Amsterdam, NY

	Aye	Nay
Alderwoman Quist-Demars		
Alderman D. Gomula		
Alderwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-183

RESOLUTION TRANSFERRING FUNDS- EMPLOYEE RELATIONS

BY: ALDERMAN S. GOMULA

WHEREAS, a transfer of funds is necessary in order to cover the cost to create an email for a P/T employee and any additional funding that may be required in contractual expense until end of FY 21/22; now therefore be it

RESOLVED, the Controller is authorized to transfer funds from the 2021/2022 budget as follows:

DECREASE EXPENSE:

A.1435.4002	Advertising	\$280.00
A.1435.4056	Travel	\$280.00

INCREASE EXPENSE:

A.1435.4000	Contractual	\$560.00
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City of Amsterdam, NY

	<u>Aye</u>	<u>Nay</u>
<u>Alderman Quist-Demars</u>		
<u>Alderman D. Gomula</u>		
<u>Alderman Collins</u>		
<u>Alderman S. Gomula</u>		
<u>Alderman Martuscello</u>		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-184

**RESOLUTION AUTHORIZING MAYOR TO EXECUTE OPTION AGREEMENT
WITH MOHAWK VALLEY DEVELOPMENTS LLC for 399 W. MAIN ST., 36
CARMICHAEL ST., 52 CARMICHAEL ST. AND 380 W. MAIN ST.**

BY: MAYOR CINQUANTI

WHEREAS, The City is the owner of that certain parcels of real property known as 399 West Main St, 36 Carmichael St Amsterdam, 52 Carmichael St and 380 West Main St Amsterdam, and

WHEREAS, the City wishes to grant to Mohawk Valley Developments, LLC, for the consideration of \$1.00, an irrevocable and exclusive option for a period of twelve months to purchase said parcels, subject to the terms and conditions set for the in the annexed Option Agreement and Memorandum of Option Agreement; it is hereby

RESOLVED, that Mayor Michael Cinquanti is hereby authorized to enter into the attached Option Agreement with Mohawk Valley Developments, LLC for the above-referenced parcels.

City of Amsterdam, NY

	Aye	Nay
Aldерwoman Quist-Demars		
Alderman D. Gomula		
Aldерwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

RESOLUTION #21/22-185

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

**RESOLUTION AUTHORIZING MAYOR TO ENGAGE RDS SERVICES, LLC FOR
RETIREEE DRUG SUBSIDY RE-OPENING SERVICES**

BY: MAYOR CINQUANTI

WHEREAS, The City of Amsterdam maintains a group health program under which eligible individuals are able to maintain certain health care benefits; and

WHEREAS, The City is desirous to engage RDS Services LLC with respect to the re-opening of previously closed Retiree Drug Subsidy Plan years, with RDS Services, LLC receiving a fee of 25% of each subsidy payment received by the City from the Centers for Medicare and Medicaid Services (CMS) as a result of the services provided by RDS Services, LLC; and

WHEREAS, a copy of the agreement being attached hereto and being incorporated herein by reference; therefore be it

RESOLVED, that Mayor Cinquanti is authorized to execute the attached contract with RDS Services, LLC

City of Amsterdam, NY

	<u>Aye</u>	<u>Nay</u>
<u>Alderwoman Quist-Demars</u>		
<u>Alderman D. Gomula</u>		
<u>Alderwoman Collins</u>		
<u>Alderman S. Gomula</u>		
<u>Alderman Martuscello</u>		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-186

**RESOLUTION TO AUTHORIZE THE CITY CLERK TO ADVERTISE FOR BONDS FOR THE
WASTEWATER SYSTEM IMPROVEMENTS, CONTRACT NO. 7 – GENERAL
CONSTRUCTION; CONTRACT NO. 8 – ELECTRICAL WORK**

WHEREAS, the City of Amsterdam is Contracted with the New York State Environmental Facilities Corporation (NYSEFC) for Project No. C4-5442-09-00 of the Clean Water State Revolving Fund (CWSRF) for various improvements to the Wastewater Treatment Plant (WWTP); and,

WHEREAS, NYSEFC has reviewed and approved plans and specifications prepared by Prime AE Group of NY related to upgrades to the WWTP Pipe Gallery as Contracts 7 & 8 of CWSRF Project No. C4-5442-09-00; and,

WHEREAS, CWSRF Project No. C4-5442-09-00 will provide the funding necessary to accomplish Contracts 7 & 8;

NOW THEREFORE, BE IT

RESOLVED that the City Clerk is hereby authorized to advertise publicly for bids for Wastewater System Improvements Contract No. 7 – General Construction, and Contract No. 8 – Electrical Work

City of Amsterdam, NY

	Aye	Nay
Alderwoman Quist-Demars		
Alderman D. Gomula		
Alderwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-187

RESOLUTION AUTHORIZING AGREEMENT -CONTROLLER/TRIAD GROUP

BY: ALDERMAN MARTUSCELLO

WHEREAS, the City of Amsterdam is desirous to renew an agreement with TRIAD to provide services in connections with Worker's Compensation Benefits related to our Public Safety Employees as well as all other City Employees

RESOLVED, the Mayor is authorized to renew the attached agreement with TRIAD GROUP, LLC for the term date of January 1, 2020 through December 31, 2022.

City of Amsterdam, NY

	Aye	Nay
Alderwoman Quist-Demars		
Alderman D. Gomula		
Alderwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

RESOLUTION #21/22-188

RESOLUTION APPROVING AUDIT

BY: ALDERWOMAN COLLINS

RESOLVED, the bills and documentation of same presented in “Pre-Check Writing Report Parameter” dated April 19, 2022 to the Common Council and affirmed by the Controller as correct and to be paid, the City Clerk is authorized and empowered to issue warrants in payment of same.

City of Amsterdam, NY

	Aye	Nay
Aldерwoman Quist-Demars		
Alderman D. Gomula		
Aldерwoman Collins		
Alderman S. Gomula		
Alderman Martuscello		

MICHAEL CINQUANTI, MAYOR

DATED: _____, 2022

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

INTRODUCTION OF LOCAL LAW “A” OF 2022 (TO BE KNOWN AS LOCAL LAW 1 OF 2022 IF ADOPTED.)

LOCAL LAW MODIFYING CITY CHARTER WITH REGARD TO CITY CONTROLLER - MANDATORY REFERENDUM

BY: MAYOR CINQUANTI

Part 1: Legislative Intent –

The fiscal crisis that the City of Amsterdam has faced over the last several years has been well-documented, including but not limited to the deficit legislation that was enacted by the State of New York in 2019. It is necessary for the City to be introspective in terms of the organizational structure of our city government so as to put the City in the best position possible for long-term success. Presently, the eligibility requirements for the position of City Controller are most similar to that of a political position such as Mayor or Alderman in that it is an elective position that only has a residency requirement and an age requirement of 18 years and there are no minimum educational or work-experience qualifications required. Given that the position of City Controller requires a high level of technical accounting skill and financial management experience and knowledge, it is believed that minimum educational and professional qualifications should be required for the position. In addition, the City Charter does not expressly provide for the position of City Controller to be under the direction and supervision of the mayor and prevents a mayor from being able to mandate production from a City Controller of many things such as the preparation of specialized reports and projections relating to City finances and future budgeting activities.

The legislative intent of the instant local law is to modify the City Charter of the City of Amsterdam so as to abolish the position of City Controller as an elected position and re-establish the position of City Controller as an appointive position made by the Mayor of the City of Amsterdam, with the term of the Controller to run coterminous with the term of the Mayor of the Amsterdam; and further establishing minimum qualifications for the new appointive position of City Controller and reorganizing the position of City Controller to be under the direction and supervision of the Mayor.

The instant local law is subject to mandatory referendum pursuant to Municipal Home Rule Law, Section 23.

Part 2: Enactment:

BE IT ENACTED AS FOLLOWS, that the City Charter of the City of Amsterdam is modified as follows:

COMMON COUNCIL MEETING

April 19, 2022

6:00PM

Modification #1:

C-9 – Remove “Controller” as an elective City officer position.

Modification #2:

C-11B – omit this subsection as the same pertains to the elective office of Controller.

Modification #3:

C-12 – Modify subsections “A” and “B” to include “Controller” as an appointive officer.

Modification #4:

C-39 of the City Charter is amended to read as follows:

The Controller shall be appointed for a term of four (4) years. He or she shall be under the direction and supervision of the Mayor. He or she shall be the chief fiscal officer of the city and have charge of the administration of all its financial affairs. He or she shall have/be one of the following minimum qualifications (1) a Certified Public Accountant; (2) a four-year degree from an accredited college and has had at least three (3) years' experience in accounting; (3) a person who has had at least eight (8) years' experience in public accounting; or (4) a person who has had equivalent experience in financial management for at least eight (8) years.

Part 3: Effectiveness: A public hearing having been held on May 3, 2022, upon ratification of the instant local law by the Common Council, said local law shall be subject to a mandatory referendum pursuant Municipal Home Rule Law, Section 23 for the approval by the electors at the general election to be held on November 8, 2022. Upon approval by the electors, the instant local law shall become effective January 1, 2023 with the first appointment for the modified position of Controller being effective January 1, 2024.

RDS SERVICES, LLC

AGREEMENT FOR RETIREE DRUG SUBSIDY RE-OPENING SERVICES

THIS AGREEMENT FOR RETIREE DRUG SUBSIDY RE-OPENING SERVICES ("Agreement") is entered into by and between RDS Services, LLC, a Michigan limited liability company ("RDS") and City of Amsterdam ("Plan Sponsor") and shall be effective as of ("Effective Date") _____.

Plan Sponsor maintains a group health program (hereinafter referred to as the "Plan") under which eligible individuals are able to obtain certain retiree health care benefits. Plan Sponsor desires to engage RDS Services, LLC to assist Plan Sponsor with certain requirements and opportunities with respect to the Re-Opening of previously closed Retiree Drug Subsidy Application plan years, and RDS Services, LLC desires to provide such assistance, all on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, the parties agree as follows:

SECTION 1 SERVICES AND RESPONSIBILITIES

1.01 RDS Services, LLC. During the term of this Agreement, RDS Services, LLC shall provide to Plan Sponsor the services described on **Exhibit A** to this Agreement (collectively, "RDS Services"). In performance of the RDS Services, RDS Services, LLC shall rely on any communication and/or data reasonably believed by it to be genuine, including necessary information received from Plan Sponsor in a timely manner and in good order. For purposes hereof, "timely manner" means a reasonable period of time as may be necessary for sorting, processing, analyzing, entering and/or posting of information received.

1.02 Responsibilities of Plan Sponsor. Plan Sponsor (or its designee(s) other than RDS Services, LLC) shall serve as the administrator, fiduciary and primary decision maker for the Plan, with all of the rights and responsibilities for administering the Plan in connection with the Retiree Drug Subsidy Program, and RDS Services, LLC shall have no such authority or responsibility except as may be specifically provided in this Agreement. During the term of this Agreement, and as a condition to RDS Services, LLC's obligation to provide the RDS Services, Plan Sponsor's responsibilities shall include the responsibilities set forth on **Exhibit B** to this Agreement.

1.03 Compensation. The fees for the RDS Services are set forth on **Exhibit C** to this Agreement. RDS Services, LLC shall send an invoice to Plan Sponsor for fees. Payment shall be due 30 days after receipt of invoice. Accounts and invoices not paid by the later of the end of the month, or within 30 days of billing, are considered delinquent and are subject to a monthly service charge of 1.5 percent (1.5%) of the delinquent amount. Late fees and charges shall not apply where there is a bona fide dispute as to the amount owed.

Caveats. By its execution of this Agreement, Plan Sponsor is acknowledging its knowledge, understanding and agreement to the specific items set forth on **Exhibit D** to this Agreement regarding the RDS Services.

1.05 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, RDS Services, LLC DISCLAIMS TO THE FULLEST EXTENT PERMISSIBLE BY LAW ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE NATURE OR STANDARD OF THE RDS SERVICES HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RDS Services, LLC BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF USE.

SECTION 2 RELATIONSHIP OF THE PARTIES

2.01 Independent Contractor. In performing services under this Agreement, RDS Services, LLC performs all acts as an independent contractor and not as an officer, employee or agent of the Plan. Nothing in this Agreement shall be construed to mean that Plan Sponsor (or any of its agents) retains any control over the manner and means of how RDS Services, LLC performs the services provided for herein, but only a right to review the results of the work performed.

2.02 Not a Fiduciary or Insurer. Plan Sponsor is the named fiduciary and/or primary decision maker of the Plan. As fiduciary and/or decision maker, Plan Sponsor maintains discretionary authority and responsibility in the administration and operation of the Plan, including, but not limited to, the determination of covered services, interpretation of the terms of the Plan, and the determination of eligibility for and entitlement to benefits under the Plan in accordance with the terms of the Plan. RDS Services, LLC does not assume any responsibility for any act, omission or breach by any fiduciary.

SECTION 3 TERM AND TERMINATION

3.01 Term. This Agreement shall be in effect for a period of one (1) year starting on the Effective Date and will renew, if necessary, for a term mutually agreed to by both parties in order complete the Re-Opening process, unless otherwise terminated in accordance with Section 3.02.

3.02 Termination. Subject to continuing obligations under Section 3.03, this Agreement may be terminated as specified below:

- (a) By either party as of the date the other voluntarily or involuntarily files for bankruptcy protection for any or all portion of its business operations;
- (b) By mutual written agreement of the parties; or
- (c) By Plan Sponsor if RDS Services, LLC breaches this Agreement in any material respect and fails to cure such breach within thirty (30) days following written notice of such breach from Plan Sponsor.

3.03 Obligations After Contract Termination; Survival. All responsibilities of either party under this Agreement shall terminate upon the termination of this Agreement, except that the following rights and liabilities of the parties shall survive the termination of this Agreement for the specified time period as provided below or as otherwise agreed by the parties hereto:

- (a) Plan Sponsor's duty to pay RDS Services, LLC for amounts due to RDS Services, LLC hereunder, including without limitation amounts due to RDS Services, LLC on account of Subsidy payments received by Plan Sponsor after termination of this Agreement as a result of RDS Services performed by, or reimbursement requests made by, RDS Services, LLC prior to termination of this Agreement, until such amounts are paid in full.
- (b) Plan Sponsor's and RDS Services, LLC respective duties hereunder that are predicated on, or reasonably contemplate continuation beyond, the termination of this Agreement, including, but not limited to, this Section 3.03 and Sections 3.04, 3.05, 3.06, and 5.02. Notwithstanding the foregoing, such duties shall not survive beyond the duration of any applicable statute of limitations.
- (c) Plan Sponsor's and RDS Services, LLC indemnification duties and liabilities under Section 4 hereof with respect to events and claims arising before the termination of the Agreement, until the appropriate statute of limitations has run.

3.04 Outstanding Fees; Records. Upon termination of this Agreement, Plan Sponsor agrees to remit to RDS Services, LLC any outstanding balances due (or which, under Section 3.03(a), becomes due) under this Agreement. Without limiting other available remedies, RDS Services, LLC shall have the right to retain all records in its possession with regard to its services pursuant to this Agreement until receipt of all outstanding monies due.

3.05 Cooperation with Successor. In the event Plan Sponsor appoints a successor to RDS Services, LLC for any or all of RDS Services, LLC services described herein, RDS Services, LLC shall cooperate as reasonably necessary in transferring files, records, reports and the like, and RDS Services, LLC shall be entitled to reasonable compensation for its services in connection therewith. Notwithstanding any provision of this Agreement (including any exhibit or addendum hereto), to the contrary, RDS Services, LLC shall not, without prior written agreement with Plan Sponsor, be obligated to assist a successor to RDS Services, LLC or otherwise take or continue any action following termination of the Agreement if and to the extent such assistance or action may reasonably be viewed as causing RDS Services, LLC to become a fiduciary with respect to the Plan in any manner.

3.06 Access to Information. Plan Sponsor shall have the right, upon providing reasonable notice, to periodically review, at its own expense, any records of RDS Services, LLC relating to the services provided herein; any examination of such records shall be carried out in a manner mutually agreeable to RDS Services, LLC and Plan Sponsor and to the extent permitted by applicable law.

SECTION 4 INDEMNIFICATION

4.01 Indemnification by Plan Sponsor. Plan Sponsor agrees to indemnify RDS Services, LLC, its officers, directors, employees and agents for and hold them harmless from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which may be paid or incurred by RDS Services,

LLC resulting from or in connection with a material breach by Plan Sponsor of its responsibilities and duties outlined under this Agreement.

4.02 Indemnification by RDS Services, LLC. RDS Services, LLC agrees to indemnify Plan Sponsor, its officers, directors, employees and agents for and hold them harmless from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which may be paid or incurred by Plan Sponsor resulting from or in connection with a material breach by RDS Services, LLC of its responsibilities and duties outlined under this Agreement.

SECTION 5 GENERAL PROVISIONS

5.01 Amendment; Assignment. This Agreement may not be amended without the express written consent of both parties. No assignment by either party pertaining to this Agreement shall be valid without the express written consent of the other party, which consent will not be unreasonably withheld.

5.02 Confidentiality. RDS Services, LLC recognizes that it shall be provided with personal information regarding Members of Plan in the course of providing services under this Agreement. RDS Services, LLC shall safeguard such information to ensure that no person who does not need to know such information has access to such information. To the extent required by law, RDS Services, LLC will enter into a "Business Associate Agreement" with the Plan and/or Plan Sponsor.

5.03 Entire Agreement. This Agreement (including any exhibits or addenda hereto) constitutes the complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, promises, and arrangements, oral or written, between the parties with respect to the subject matter hereof.

5.04 Governing Law. To the extent not preempted by federal law, including ERISA, this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to conflicts-of-law principles that would require the application of any other law.

5.05 Headings. The headings of this Agreement are solely for the convenience of the parties and do not affect the meaning or interpretation of any provision of this Agreement.

5.06 Notice. Any notice required to be given hereunder between the parties shall be written, effective upon receipt and shall be served by facsimile or by personal delivery or certified mail, return receipt requested to the address cited in the signature block of this Agreement or to such other address as shall be specified by like notice by either party.

5.07 Other Service Providers; No Legal or Tax Advice. RDS Services, LLC may seek the services of others in performing its duties and obligations under this Agreement. Such service providers shall not have access to personal health information of Plan Sponsor's Members unless such service providers sign a business associate agreement with RDS Services, LLC which is substantially the same as the business associate agreement executed between RDS Services, LLC and the Plan and/or Plan Sponsor. Plan Sponsor acknowledges and agrees that RDS Services, LLC services pursuant to this Agreement are in the nature of consulting, logistical and non-discretionary ministerial services and are not intended, and shall not be construed or characterized as, the provision of legal or tax advice or professional fiduciary services.

5.08 Successor and Assigns; Waiver. Subject to the provisions of Section 5.01 above, this Agreement shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective successors and assigns. Failure to enforce any provision of this Agreement shall not affect the rights of the parties to enforce such provision in another circumstance or their right to enforce any other provision of this Agreement at any time. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement.

5.09 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.

EXHIBIT A

RDS SERVICES

During the term of this Agreement, RDS Services, LLC shall provide the following services, as more specifically detailed in Sections 1 through 4 below:

1) RDS Services – Initial Preparation For A Re-Opening.

- (a) Work with Plan Sponsor team to gather, review and assess prior year Retiree Drug Subsidy Applications, data received from vendor(s) and data sent to Centers for Medicare and Medicaid Services (CMS) for those plan years under consideration for Re-Opening.
- (b) Identify all potential “data sources” for client engagement

2) Specific RDS Services –Data Management Services

- (a) Build an “import application” specific to each data source
- (b) Develop and test vendor specific data mapping (technical architecture and design for client specifications)
- (c) Import all data from all “pre-identified” sources into proprietary database application

Using proprietary application to:

- i. Review and analyze, Medicare Eligible members (“MEM”)
- ii. Review and qualify costs associated with a MEM by plan year
 - 1. Identify “outlier” data sets for review by Retiree Drug Subsidy (RDS) Program Analysts
- iii. Capture and match members; identify mismatched data elements
- iv. Validate common membership data
- v. Match prescription drug cost data to “unique” MEMs found
- vi. Aggregate prescription drug claims for individuals with multiple benefit plan options
- vii. Track threshold and cost limits over multiple plan years
- viii. Prepare a request for “Re-opening” as available under Centers for Medicare and Medicaid Services (CMS’s) Retiree Drug Subsidy program, in connection with the Plan (as described in 42 CFR 423.880 through 888).
- ix. Submit “aggregated” Cost Summary to CMS

3) Specific RDS Services – Administrative/Recordkeeping. During the term of this Agreement, RDS Services, LLC shall provide the following ongoing services:

- (a) Establish project timelines, establish and run regular “progress” meetings

(b) Correspond with Centers for Medicare and Medicaid Services (CMS) regarding “Re-Opening Request”

- (c) Track and Report status of pending “Re-opening”
- (d) Act as liaison with data vendors (i.e. carriers, PBM’s, TPA’s)
- (e) Maintain Non-Medicare NDC Claim “Exclusion” tables
- (f) Maintain Data Security Protocols
- (g) Maintain and update a database containing Plan Sponsor data, including, but not limited to, member eligibility and prescription drug claim data collected for the purpose of compiling and aggregating data under the Plan and/or under the Retiree Drug Subsidy (RDS) Program;
- (h) Maintain other appropriate records regarding the Plan in respect to the Retiree Drug Subsidy (RDS) Program as may be required by federal law; and
- (i) Assist Plan Sponsor with submission of, or access to, the records in Retiree Drug Subsidy (RDS) database as may be required for Centers for Medicare and Medicaid Services (CMS) regulatory, audit, and/or other business purposes.

4) Specific RDS Services –Submission Requirements for Re-Opening

- (a) Become assigned as vendor, Account Manager and/or designee on Retiree Drug Subsidy (RDS) Account
- (b) Review and upload “Retiree List” to Retiree Drug Subsidy (RDS) for approval
- (c) Complete all retiree data transfers to carriers or PBMs, if applicable
- (d) Final review of MEM records
- (e) Complete 1st 11 steps of the Re-opened Reconciliation for Centers for Medicare and Medicaid Services (CMS)
- (f) Complete Payment Setup requirements

EXHIBIT B

RESPONSIBILITIES OF PLAN SPONSOR

Provide Access to Retiree Plan Information and Provide Support Retrieving Vendor Files. Plan Sponsor shall:

- (a) To meet with RDS Services, LLC to discuss engagement; assist RDS Services, LLC to identify all potential member and claim data sources; provide contact information of current and past vendors; review prior Retiree Drug Subsidy applications;
- (b) Provide a complete and accurate set of current and past enrollment records for all employee and retiree members under the Plan. Such records shall be delivered to RDS Services, LLC in an electronic format acceptable to RDS Services, LLC as soon as practicable following the Effective Date;
- (c) Make available, or cause to be made available to RDS Services, LLC, certain reports and information to which Plan Sponsor has access, as mutually agreed to by the parties. Such reports and information may include but shall not be limited to: (i) attestation that an employee or retiree member is, or was for the applicable plan year, eligible for benefits under the Plan; (ii) verification of certain members identifying information; (iii) verification of Retiree Drug Subsidy Eligible Retiree coverage period. Upon request, Plan Sponsor shall provide RDS Services, LLC with any other reasonable and necessary information regarding Retiree Members;
- (d) To enable RDS Services, LLC to fulfill its duties regarding the Retiree Drug Subsidy, Plan Sponsor agrees to assist in providing, or locating the original data files that support the last CMS Reconciliation Cost Summaries that are the subject of this Re-opening engagement. Absent these files, RDS Services, LLC ability to conduct an optimal and accurate Re-Opening analysis may be compromised;
- (e) To enable RDS Services, LLC to fulfill its duties regarding the Retiree Drug Subsidy, Plan Sponsor agrees to assist RDS Services, LLC with engaging the Prescription Benefit Manager (PBM) and carrier vendors; supporting RDS Services, LLC if vendor is not cooperating with the data file requests;
- (f) Be solely responsible to inform RDS Services, LLC of any changes in the information it previously supplied RDS Services, LLC.

Re-Openings, RDS Applications and Related Tasks

- (a) To enable RDS Services, LLC to fulfill all of its duties regarding the Retiree Drug Subsidy, Plan Sponsor consents to and authorizes RDS Services, LLC designation of an employee or a representative of RDS Services, LLC to be the Account Manager and/or a designee for purposes of the Retiree Drug Subsidy application(s) re-opened, with the necessary authority to (i) begin the re-opening process on behalf of Plan Sponsor, and (ii) have and maintain full access to Plan Sponsor's Retiree Drug Subsidy Applications.

- (g) (b) To enable RDS Services, LLC to fulfill all of its duties regarding the Retiree Drug Subsidy Program, Plan Sponsors consents to and authorizes RDS

RDS Services, LLC' designation of employees or representatives of Retiree Drug Subsidy to act as designees in connection with the Retiree Drug Subsidy application(s) re-opened, with the necessary authority to (i) gather, organize and submit appropriate information to Centers for Medicare and Medicaid Services (CMS) and (ii) request Retiree Drug Subsidy payments from Centers for Medicare and Medicaid Services (CMS).

- (c) Plan Sponsor shall provide its full and good faith cooperation in the procurement; access and/or review of such other reasonable information as may be determined by RDS Services, LLC to be reasonably necessary in order to perform its services hereunder.

Except as may be otherwise agreed to by RDS Services, LLC, Plan Sponsor specifically agrees that:

- (h) (i) All electronic communications between Centers for Medicare and Medicaid Services (CMS) and Plan Sponsor or any of its employees or agents shall exclusively be conducted through the Server, URL address, email address and/or website established or approved by RDS Services, LLC for Plan Sponsor, and
- (i) (ii) Any electronic communication related to this Agreement to Centers for Medicare and Medicaid Services (CMS) from Plan Sponsor or any of its employees or agents shall only be initiated with the knowledge and consent of the Retiree Drug Subsidy Account Manager.

HIPAA Compliance.

Notwithstanding any provision in this Agreement to the contrary, Plan Sponsor shall, during the term of this Agreement, be solely responsible for ensuring that the Plan is and remains in full compliance with the privacy and security requirements under the Health Insurance Portability and Accountability Act (HIPAA) and implementing regulations. In particular, Plan Sponsor shall have in place all necessary business associate agreements, Plan amendments, and related documentation to the extent required under HIPAA in order to (i) permit the disclosure of protected health information (within the meaning of HIPAA) to Plan Sponsor and (ii) establish the permitted and required uses and disclosures of protected health information by Plan Sponsor.

EXHIBIT C

COMPENSATION

RDS Services, LLC compensation for the services provided pursuant to the Agreement shall be:

1. Re-Opening Subsidy Services. For the Retiree Drug Subsidy Services as described in Sections 1, 2, 3 and 4 of **Exhibit A** to this Agreement, the fee for such Retiree Drug Subsidy Services shall be equal to **25%** (twenty five percent) of each Subsidy payment received by Plan Sponsor from Centers for Medicare and Medicaid Services (CMS) as a result of any Re-Opening services performed by RDS Services, LLC or reimbursement requests made by RDS Services, LLC pursuant to this Agreement. A re-opening engagement may include a review of multiple plan years.

HOW YOUR FEE IS CALCULATED

For purposes of clarifying the foregoing language, it is understood that Fees shall be paid to RDS Services, LLC based on this Agreement after the Plan Sponsor receives the subsidy payment(s) as stated in *paragraph 1.03*.

EXHIBIT D

CAVEATS

Plan Sponsor acknowledges, understands and agrees to the following with respect to Re-Opening Subsidy services:

1. In the event that RDS Services, LLC concludes that the Plan does not qualify for additional Subsidy, Retiree Drug Subsidy, the Re-Opening engagement will end with no residual duty or obligation for RDS Services, LLC (RDS Services, LLC will try and make this determination as soon as possible following the receipt of all pertinent data collected for the re-opening engagement);
2. Plan Sponsor has been given a copy of the “Request for Re-Opening” and acknowledges that upon re-opening a previously closed plan year, all discoveries of missing or incorrect data applicable to that plan year, must be reported to Centers for Medicare and Medicaid Services (CMS).
3. Plan Sponsor understands that the additional subsidy found may vary substantially and it is not possible to accurately predict the amount of such subsidy for any given plan year re-opened. Plan Sponsor’s actual additional Subsidy will be calculated based on identifying additional member and claim data not reported during the plan’s initial Reconciliation;
4. In generating benefit cost information for purposes of requesting Subsidy payments, RDS Services, LLC may need to filter out certain claims that may not qualify under the Retiree Drug Subsidy Program and are therefore ineligible for Subsidy payments. Due to impracticalities that are inherent in any filtering process (e.g., whether a claim should or should not be filtered out in this process may depend on factual circumstances that could not be known by RDS Services, LLC or any other vendor), RDS Services, LLC will adopt, unless instructed otherwise by Plan Sponsor, a conservative approach that errs in favor of excluding claims that potentially may NOT be covered under the Centers for Medicare and Medicaid Services (CMS) statute and any regulations forthcoming. This conservative approach is intended to minimize the possibility of Plan Sponsor improperly receiving more payments than is legally permitted under the Retiree Drug Subsidy program;
5. In generating benefit cost information for purposes of requesting Retiree Drug Subsidy payments, RDS Services, LLC will need to report to Centers for Medicare and Medicaid Services (CMS) any rebates or other provider discounts, credits or like amounts received by the Plan Sponsor or the Plan; and
6. RDS Services, LLC will also keep Plan Sponsor up to date on the progress of receipt of any subsidy amounts.

EXHIBIT E

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made as by and between Alachua County Board of County Commissioners (“Covered Entity”) and RDS Services, LLC. (“Business Associate”).

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements, and may in the future become parties to additional agreements (collectively, the “Underlying Agreements”), pursuant to which Business Associate provides certain services to Covered Entity and , in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable Protected Health Information relating to covered persons of Covered Entity that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as such law and regulations may be amended from time to time (collectively, “HIPAA”); and

WHEREAS, by reason of such activities, the parties believe that Business Associate is a “business associate” of Covered Entity, as such term is defined in 45 CFR 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the parties agree as follows:

1. Definitions.

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. “Business Associate” shall generally have the same meaning as the “business associate” at 45 CFR 160.103.
- b. “Covered Entity” shall generally have the same meaning as the term “covered entity at 45 CFR 160.103.

- c. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.
- d. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- e. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- f. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 CFR Parts 160, 162 and 164.
- g. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- h. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- i. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- j. "Underlying Agreement" shall mean the Agreement for Retiree Drug Subsidy Reopening Services.

2. Obligations and Activities of Business Associate

- a. Business Associate shall not use or disclose Protected Health Information except for the purpose of performing Business Associate's obligations under the Underlying Agreement and as permitted under the Underlying Agreement and this Agreement or as Required by Law. Further, Business Associate shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule, HIPAA Rules, or other applicable federal or state law if so used by Covered Entity, except that Business Associate may use Protected Health Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes involving one or more Affiliate Entity (as defined herein) of Covered Entity for the Health Care Operations of Covered Entity. For purposes of this Agreement, "Affiliate Entity" shall mean an individual or corporation, partnership or other legal entity that controls, is controlled by or under common control with Covered Entity.

Business Associate shall not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth herein.

- b. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or any security incident of which it becomes aware involving Protected Health Information of the Covered Entity, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware within a reasonable time of becoming aware of such use or disclosure (but no later than 24 hours thereafter). Such notification shall include, as applicable, at a minimum: (i) the date of disclosure; (ii) the name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Covered Entity of the basis of the disclosure or a copy of the written request for disclosure. Business Associate shall take prompt action to cure any such deficiencies as reasonably requested by Covered Entity.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate shall implement appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent the use or disclosure of Protected Health Information other than as permitted by the Underlying Agreement or this Agreement. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities.
- e. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent, including a subcontractor, whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate shall sign an agreement with such agents or subcontractors containing substantially the same provisions as this Agreement and further identifying Covered Entity as a third-party beneficiary with rights of enforcement and indemnification from such agents or subcontractors in the event of any violation of such agreement. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions.

- f. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. In the event that any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity. A denial of access to required Protected Health Information shall not be made without the prior written consent of Covered Entity.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. If any Individual requests an amendment of Protected Health Information directly from Business Associate, Business Associate must notify Covered Entity in writing within 5 days of the request. A denial of amendment of Protected Health Information maintained by Business Associate or its agents or subcontractors shall not be made without the prior written consent of Covered Entity.
- h. Within 10 days of notice by Covered Entity of a request for an accounting of disclosures of Protected Health Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an account of disclosures to enable Covered Entity to fulfill its obligations under Section 164.528 of the Privacy Rule. In accordance with the Privacy Rule, Business Associate shall not include in such accounting those disclosures made: (i) to carry out treatment, payment or health care operations, as provided in Section 164.502 of the Privacy Rule; (ii) to individuals of Protected Health Information about them as provided in Section 164.502 of the Privacy Rule; (iii) pursuant to an authorization as provided in Section 164.508 of the Privacy Rule; (iv) to persons involved in the individual's care or other notification purposes as provided in Section 164.510 of the Privacy Rule; (v) for national security or intelligence purposes as provided in Section 164.512(k)(2) of the Privacy Rule; or (vi) to correctional institutions or law enforcement officials as provided in Section 164.512(k)(5) of the Privacy Rule. Business Associate agrees to implement a process that allows for an accounting of disclosures of Protected Health Information to be collected and maintained by Business Associate and its agents or subcontractors. In addition, Business Associate agrees that upon request by Covered Entity, Business Associate shall provide to Covered Entity an accounting of all such disclosures. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person; (iii) a brief description of the Protected Health Information

disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis of the disclosure or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall, within five days of a request, forward it to Covered Entity in writing. It shall be Business Associate's responsibility to prepare, and Covered Entity's responsibility to deliver, any such accounting requested. Business Associate shall not disclose any Protected Health Information, except in accordance with this Agreement.

- i. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy & Security Rules. Notwithstanding the foregoing, no attorney-client, accountant-client or other legal privilege shall be deemed waived by Covered Entity or Business Associate by virtue of this section. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documents by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any Protected Health Information that Business Associate provides to the Secretary concurrently with providing such Protected Health Information to the Secretary.
3. Minimum Necessary. Business Associate (and its agents or subcontractors) shall only, request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.
4. Data Ownership. Business Associate acknowledges and agrees that Business Associate has no ownership rights with respect to the Protected Health Information.

5. Audits, Inspection and Enforcement. Within 10 days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct an inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Health Information pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

6. Term and Termination.

a. Term. The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with the opportunity to cure the breach within a specified number of days as set forth in the notice by Covered Entity or, if no cure takes place within the time period specified by the Covered Entity terminate the Underlying Agreement, or (2) terminate the Underlying Agreement immediately.

c. Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement or the Underlying Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received by Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the

conditions that make return or destruction of Protected Health Information infeasible. In the event that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(d) Effective Date. The effective date of this Agreement shall be the effective date of the Underlying Agreement.

7. Indemnity. Business Associate agrees to indemnify and hold harmless Covered Entity and its affiliates, and their respective officers, directors, employees and agents from and against any and all liability, loss, fines, penalties, damage, claims or causes of action and expenses associated therewith caused directly or indirectly by Business Associate's breach of its obligations under this Agreement. In no event shall the Business Associate's liability exceed one year's annual contract fee.
8. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with applicable changes in law. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security and confidentiality of Protected Health Information. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Health Information. Upon request from Covered Entity, Business Associate agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. Covered Entity may terminate the Underlying Agreement upon 30 days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of Protected Health Information that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.
9. Litigation Assistance. Except when it would constitute a direct conflict of interest for Business Associate, Business Associate will make itself available to reasonably assist Covered Entity in any administrative or judicial proceeding. The Business Associate's liability shall not exceed the limitation described in #7 above.

10. Regulatory References. Any reference in this Agreement to federal or state law means the section that is in effect or as amended.
11. Choice of Law. At all times the terms of this agreement shall be construed to allow for compliance by the Covered Entity with HIPAA and the HITECH Act. This Agreement shall be governed by the laws of the State of Michigan.
12. No Private Right of Action Created. This Agreement does not create any right of action or benefits for individuals whose Protected Health Information is disclosed in violation of HIPAA or other law or regulation relating to security or privacy for such Protected Health Information.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date, by their duly authorized officers.

RDS Services, LLC

By: _____

Name: George FoxTitle: National Director of AccountsAddress: 50 W. Big Beaver Road
Suite 220
Troy, MI 48084

Date: _____

City of Amsterdam

By: _____

Name: _____

Title: _____

Address: _____

Date: _____

THIS AGREEMENT is made between the City of Amsterdam (hereinafter Client) a with its principal office located at 61 Church St., Amsterdam, NY 12010 and TRIAD GROUP, L.L.C, having its office at 400 Jordan Road, Troy NY 12180 (hereinafter Triad).

Article 1. Term And Termination

- 1.1. The initial term of this agreement shall be 12:01 a.m. January 1, 2020 through 11:59 p.m. December 31, 2022. Client has the option to renew this agreement for four (4) additional one-year terms for a final total possible term ending 11:59 p.m. December 31, 2026.
- 1.2. This agreement is authorized by Client.
- 1.3. Either party shall notify the other party, no less than 30 days, prior to the end of the initial term and any successive term of its intent to non-renew. If either party fails to notify the other party of its intent to non-renew within said 30 days, then this agreement shall automatically renew for another one-year term, subject to the limitation of terms in paragraph 1.1.
- 1.4. Triad may terminate this agreement without cause no less than 90 days notice to Client of its intent to terminate.
- 1.5. Triad may terminate this contact with no less than 30 days notice to Client, upon filing of bankruptcy by Client.
- 1.6. Following ten (10) days' notice to the other party and an opportunity to cure within those ten days either party may terminate this agreement at any time for a material breach of this agreement.
- 1.7. Client may immediately terminate this agreement upon the following:
 - 1.7.1. The insolvency of Triad including commencement of involuntary bankruptcy proceedings against Triad.
 - 1.7.2. Failure of Triad to maintain any required license in good standing.
 - 1.7.3. Any incident of employee theft or dishonesty (as those terms are defined by standard New York issued bonds to cover such acts) by any employee of Triad, not covered by Triad or its insurer.
 - 1.7.4. Failure to maintain any of the insurance or bonds as required by this agreement.

- 1.7.5. Client ceasing the operation of its New York State Workers' Compensation claims.
- 1.8. At the conclusion of this Agreement, all files shall be returned to Client or its agent/designee at its specific instance and request. Transfer of physical files and printed reports shall fulfill all of Triad's obligations hereunder. Any electronic data conversion shall be at the sole expense of Client.
- 1.9. The rights and obligations imposed upon Triad by this agreement shall thereupon cease at the conclusion of the term of the contract, unless parties agree to renew or if automatic renew occurs per Section 1.3.
- 1.10. Following the turnover of any paper files and required electronic records Triad will submit a final accounting of services rendered and the delineation of any fees due and owing.

Article 2. Definitions

As used in this Service Agreement, the following terms shall have the following meanings:

- 2.1. "Adjust" or "Adjustment": Process of investigation, evaluation and disposition of claims alleging work-related injury, damage, disease or loss.
- 2.2. "Allocated Loss Expense": Fees for services payable by Client to third parties including, but not limited to:
- 2.2.1. Service of process, deposition scheduling and subpoenas, transcripts, proceedings and cost of copies thereof;
 - 2.2.2. The cost of depositions and court reporter or recorded statements and other similar costs and expenses;
 - 2.2.3. Fees to attorneys for the institution or prosecution of any subrogation recovery or contribution action;
 - 2.2.4. Fees to attorneys and licensed representatives for services in connection with any Workers' Compensation proceedings, Workers' Compensation Appeals to Board actions as awarded by the Workers' Compensation Board, or Appeals and Motions to the New York Supreme Court, Appellate Division or Court of Appeals;
 - 2.2.5. Fees to physicians and surgeons, laboratories, clinics and hospitals for examination or treatment of employees, including independent medical examinations;

- 2.2.6. The cost of surveillance and investigation;
 - 2.2.7. The cost of employing experts for the purpose of appraisals, survey, map preparation, diagrams, chemical or physical analysis or the solicitation of expert advice or opinions in involved chemical, physical or legal questions;
 - 2.2.8. The cost of copying of hospital and medical records, enhanced medical bill review, the cost of 3M software used for medical bill review, medical bill adjudication;
 - 2.2.9. The cost of nurse case management;
 - 2.2.10. The cost of Medicare Set Aside determination;
 - 2.2.11. The cost of ISO searches and review;
 - 2.2.12. The cost of Variance Responses to requests for variance from the Medical Treatment Guidelines made by Medical Professionals;
 - 2.2.13. Preferred Provider Organization (PPO) fees;
 - 2.2.14. EDI costs;
 - 2.2.15. Positive pay fees, banking fraud control costs and other banking fees;
 - 2.2.16. Responses to MG-2s, C-4auths and PARs;
 - 2.2.17. Bill review;
 - 2.2.18. Third-Party action lien recovery;
 - 2.2.19. Drafting stipulations;
 - 2.2.20. Medicare Secondary Payer, HICRA and OSHA reporting;
 - 2.2.21. HIMP responses;
 - 2.2.22. Clearing House fees.
- 2.3. "Claim": Any incident that could, in Triad's judgment, result in Client's legal obligation to pay benefits pursuant to the applicable statutory scheme of benefits and for which Triad

has received a report from Client. Claim shall also include any fee paid at the direction of Client that, in Triad's judgment, Client is not legally obligated to pay.

- 2.4. "Third Party" shall mean any person, partnership, corporation or other legal entity except Triad, attorneys under contract with Client and Client's employees.

Article 3. Services Provided

Subject to all other terms and conditions of this service agreement, Triad shall use its best efforts, consistent with the level of professionalism and skill from other similarly situated professional organizations or individuals providing such services to provide the following services:

- 3.1. Claim Adjustment: As set forth and limited in Article 6 of this Service Agreement, Triad shall review claims against Client, conduct appropriate investigations of such claims, secure necessary claims-related services on behalf of Client, recommend, negotiate and adjust settlement of claims within the settlement authority limits established by Client (if applicable) and provide to Client reports and claims transactions summaries.
- 3.2. Claim Fund: The payment of claims and expenses (other than Triad's administrative fees) by Triad shall be made from a claim payment account funded by Client. Unless otherwise directed by Client, this payment procedure includes settlement of claims. Whenever the schedule of services provides for "payment," such payment shall be made on behalf of Client with Client funds.
- 3.3. Standard Reporting: Triad shall collect, receive and store in Client's claim exposure and other necessary data and will organize such data in reports to provide risk management information. The types and distribution of such reports shall be as agreed between Client and Triad.

Article 4. Risk Data Reporting

Reports in accordance with the terms as provided in this Article.

- 4.1. Ownership of Materials: All materials and data collected and created by Triad in performance of its duties and obligations under this Service Agreement shall belong to, and remain as property of Client.
- 4.2. Client's Accessibility to Data: Upon execution, by Client, and the particular employees of Client whom seek access, of requisite Information and Security Policy, Triad shall make available to the Client, at the request of the Client, online access to its claim data through

its standard online access interface. All data shall be available and reviewable in Triad's then standard format at all times, other than during periods of routine maintenance of Triad's system. Client shall be responsible for any necessary hardware and bandwidth necessary to access said system.

- 4.3. Hold Harmless: Triad agrees to grant access, of claim information and other Non-Public information, within the meaning of 23 NYCRR 500 et seq via Triad's proprietary Claim Information System, to Client and any of Client's designated agents. For consideration of Triad granting such access, Client agrees to hold Triad and its affiliates harmless from and against any loss, damage or liability, criminal, civil or regulatory, resulting for this access.
- 4.4. Protection of Data: Triad shall make all reasonable efforts to insure the availability of the risk data and associated images via its then current system.
- 4.5. Privacy of Data: Triad will take reasonable efforts to ensure the confidentiality of data used in the performance of this Service Agreement. Triad will not disclose Client data or records to any third party without the written consent of Client, unless such disclosure is required by a lawful court subpoena.

Article 5. Independent Contractor Status and No Conflict of Interest

5.1. Triad is not an employee of Client.

- 5.1.1. The parties to this agreement expressly intend NOT to create an employee-employer relationship. No agency relationship exists between the parties, except as expressly provided for herein, shall exist either as a result of the execution of this Service Agreement or performance hereunder.
- 5.1.2. Triad will ensure that Triad and/or each of the Triad's employees will not hold himself or herself out as, or claim to be, an officer or employee of Client by reason of this agreement, and that no employee of Triad will make any claim, demand or application for any right or privilege applicable to an officer or employee of Client, including, but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement system membership or credit.

5.2. Triad represents that no officer or employee of Client who exercises any functions or responsibilities in connection with Client funded contracts, projects or programs has any direct or indirect personal financial interest in this contract.

Article 6. Compensation

- 6.1. Except as otherwise provided in this Service Agreement, Client shall compensate Triad in accordance with the terms of this Article.
- 6.2. Annual claim administration fee of \$7,500, payable monthly.
- 6.3. HICRA and Medicare Secondary Payer Reporting fee of \$1,800 annually, payable October 1 of each year.
- 6.4. PPO fee is 30% of savings
- 6.5. Medical Bill Review is 15% of savings
- 6.6. MG-2/C-4auth/PAR responses is \$125 per response
- 6.7. \$40 per ISO search
- 6.8. Banking fees: \$5,000 annually, plus bank charges
- 6.9. GML 207 case management: \$300 per claim for the first month on any claim a nurse is assigned and \$175 per claim for each additional month a claim is assigned to a nurse.
- 6.10. Nurse Case Management for non GML 207 claims: \$125 per month per claim.
- 6.11. **Optional/Additional Fees**
 - 6.11.1. **Optional Loss Transfer (if requested by Client): 25% of recovery**
 - 6.11.2. **Optional Loss Control \$150/hour (if requested by Client)**
 - 6.11.3. Client hereby acknowledges and agrees that Triad leadership has disclosed its relationship with MarTor, LLC and authorizes Triad and its principals to collect and receive both revenue and profits which it may realize after selling/Renting durable

medical equipment and necessary supplies to plan claimants whenever authorized by Client.

6.11.4. Legal Fees: Client agrees that the following legal fees are optional and additional fees for which would be billed and handled by Manes and Manes:

6.11.4.1. Attendance of virtual hearing costs \$80 per hearing, plus \$125 per lay witness testimony

6.11.4.2. Depositions cost \$450 per, plus a \$75 scheduling fee (the costs the stenographer and transcript are separate ALAE expense)

6.11.4.3. Written memorandums, administrative appeals or rebuttals, stipulations and other written documents cost \$200 per

6.11.4.4. Drafting of Section 32 Settlement Agreements cost \$200 per

6.11.4.5. Supreme Court Appeals and Motions cost \$6,500 per

Article 7. Conditions and Limitations

7.1. Audit and Inspection: The Client has the right to inspect and audit claim adjustment files or any matter covered by this service agreement with at least 20 business days advance notice to Triad.

7.1.1. Only an employee of Client, a Certified Public Accounting Firm, Counsel or a Consultant of the Client's choosing or an Excess Loss/Liability insurance company shall conduct any such inspection or audit.

7.1.2. Client will pay the costs of any such inspection or audit, but shall not be charged for system access time for its auditor. The right to audit shall survive the termination of this agreement for two years.

7.2. Neither this Service Agreement nor any rights hereunder shall be assigned by either party without first obtaining the prior written consent of the other party.

7.3. The laws of the State of New York (without regard to choice of law principles) shall govern the terms of this Service Agreement. Any dispute between the parties shall be brought in a court of competent jurisdiction and shall be venued in the City Rensselaer. Any adjudication by any court of competent jurisdiction that invalidates any part of this Service Agreement shall not act to invalidate any other part thereof.

Article 8. Insurance

- 8.1. Triad shall maintain during the term of this contract insurance protecting against liability for injury to persons or property in the following amounts: Comprehensive General Liability, including bodily injury and property damages coverage of \$1,000,000 per occurrence, \$3,000,000 aggregate.
- 8.2. Triad agrees that all of its employees shall be fully covered by Workers' Compensation, and New York State disability insurance coverage.
- 8.3. Triad shall maintain for the term of this contract Errors and Omissions Coverage with a limit of not less than \$1,000,000.00 per claim.
- 8.4. Triad shall maintain for the term of this contract an employee theft and dishonesty bond, with a face amount of not less than \$1,000,000 per incident.
- 8.5. All insurance and bonds required by this agreement shall be at Triad's expense.

Article 9. Banking and Payment Procedures

- 9.1. Triad shall establish a separate bank account(s) in Client's name for the sole purpose of paying valid claims and claim expenses, including Allocated Expenses.
 - 9.1.1. Triad shall be responsible for both the proper and timely payment of all claims and claims-related expenses.
 - 9.1.2. Triad will be financially responsible for any misuse or misappropriation of funds drawn on this account by its personnel.
 - 9.1.3. All payments made by Triad on Client's behalf shall be made from the account(s) using funds deposited in the account(s) by the Client in amounts equal to the claim and expense payments made.
- 9.2. Upon notice from Triad, as may be required, the Client or its designee shall promptly place additional funds in the aforementioned bank account(s) in an amount sufficient to replenish the total funds required by Triad in order to fulfill the timely and accurate payment function required of it.
- 9.3. Triad shall control disbursement of monies from the accounts exclusively for the purpose of paying claims and related expenses.

9.3.1. Triad shall issue checks on check stock held by Triad or its subcontractor.

9.3.2. Client and Triad hereby covenant that the layout format of said checks is agreeable to both parties.

9.4. Triad shall be responsible for reconciliation of the bank account and any banking charges related to the proper management of this account.

Article 10. Modification and Severability

10.1. This agreement, including Schedule I hereto, constitutes the entire agreement between the parties. No parol evidence shall be admissible to consider the intent of the parties

10.2. This agreement shall only be modified in writing signed by both parties with the same formalities as the original agreement.

10.2.1. Any written authorization or approval required by provided by this contract may be conveyed by the electronic media of email or fax.

Any notice required by this agreement shall be provided in writing. The notifying party may, but is not required to, send a courtesy copy via fax message in addition to a mailed copy of the required notice. For purposes of this subsection "mail" means the United States Postal Service or other common carrier that provides tracked delivery services to both parties' official addresses.

Whereunto, the parties have affixed their signatures to signify their agreement.

Triad Group, LLC

By: Victoria Manes

President

State of New York

County of _____

On the _____ day of _____ in the year 2019 before me personally appeared Victoria Manes personally known to me or proved to me with satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that she executed the same in her capacity(ies), and that by her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

CLIENT

By: City of Amsterdam

State of New York

County of _____

On the _____ day of _____ in the year 2019 before me personally appeared _____, personally known to me or proved to me with satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public